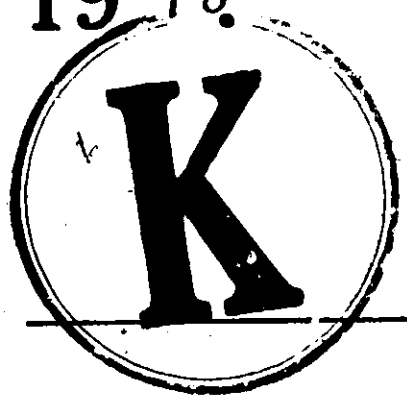
1948

File No. O. Torts/48



Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions regarding Torts.

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423-A

C O N T E N T S

Legal Department, File No. 3. Torts /48

Sr. No.	Compilation No.	Subject	Pages.
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2.	O.No.7626 12-8-48	Govt's liability to pay compensation.	5
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4.	O.N. 1204 20-12-48	Sueing of Mr. Mehta, ex-cashier, for repayment of money lost on account of his negligence.	15-17

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Legal Department
R.L.A. 6786/28-5-48
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Submitted.

The facts of the case in brief are as follows:- G.T.S. Truck No BMS-1187 driven by Driver Abdul Bashir was involved in an accident with a private car no BMY-3368 on 8/12/47. The case was taken up by the Police which resulted in the conviction of the driver for offence under sec. 78 M.V. Act. r/w sec. 112 M.V. Act. Abdul Bashir pleaded guilty and was sentenced to pay a fine of Rs. 15/- or 2 weeks S.I./M/S. Employers Liability Assurance Corporation Ltd with whom the above private car was insured have now claimed the cost of repairs amounting to Rs. 306/4/3.

The question for R.L.A's consideration is whether Government is responsible for damages arising out of the tortious acts of its servant.

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Motor accident by driver of G.T.S. Truck resulting in damage to motor car No. BMY 3368

Office of the R.L.A.

The decision in P.& O. Steam Navigation Co. vs. Secretary of State for India in Council (1861, 5 Bom H.C. Appx. p. 1) will apply to the present case and Government will have to pay the costs of repairs.

Sd/- P.M.Lad
15/7

o.c. Remembrancer of Legal Affairs.

U.R. to H.D., No. 6713 dated the 17th July 1948

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Office of the R.L.A.

The claim made by Mr. Modi should be defended, although the position of Government's liability is not quite free from doubt. Since the Executive Engineer, Poona, has already sent a reply refusing to accept the claim, no further action appears necessary at this stage.

Sd/- P.M.Lad
12/8

o.c. Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 7626 dated the 12th August 1948

Mjr/17/5
4 C.

Defamation of Dr. Mata Prasad.

In the issue of "Blitz" dated July 3, 1948, three articles are published about Dr. Mata Prasad under the heading "Why do they still tolerate Dr. Mata Prasad at R.I.S.C.? The question raised for R.L.A.'s consideration is whether these articles are defematory of Dr. Mata Prasad.

In the first article under the name of a 'Scientist' it is urged that Dr. Mata Prasad should be removed from the R.I.Sc., It is alleged:

> "It is disappointing to note that nothing has been done to eliminate those who exercise a pernicious influence on the education of our youth.... It is, therefore, surprising that the foremost institution for the study of science in our Province - The Royal Institute of science - should continue to be under the principalship of Dr. Mata Prasad, whose deplorable record and questionable methods in research were set forth before the public in uncompromising terms by your fearless Investigator. Any Administration that calls itself responsive to criticism would long ago have taken steps for his removal. The fact that he has not been removed is capable of only two interpretations : either that he has cast an incurable spell on our Prime Minister who is also our Education Minister, or that the Ghost of nepotism has not yet been laid with the advent of freedom. It is distressing to note that public funds should be squandered on the maintenance of an individual about whose incompetence and inefficiency there is no ambiguity. Dr. Mata Prasad's retention in the present post at the cost of Public Exchequer, is wholly unjustifiable by his unworthy record. His continuance would not only be a grave scandal, but also a demoralising factor and do irreparable harm to students attending the Institute. Final solution of the issue presents no difficulty. It is clear, and that Dr. Mata Prasad must go."

In the second article which appears to have been based on the report published in the "Vividh Vritta" a local Marathi weekly, it is alleged that Dr. Mata Prasad accompanied by his wife suddenly appeared at the Government Printing Press at Charani Raod while M.Sc. examination papers were being printed and proofs being read, that the presence of Mrs. Mata Prasad was objected to by the other examiners and soon

after this incident it was reported that Materia Medica test paper in the L&PS leaked out.

In third article under the heading "Mata Prasad's High -handedness", and explanation from Dr. Mata Prasad is sought about the transfer of the services of Dr. Bharucha from the Royal Institute of Science to Ahmedabad.

Obviously the third article not being defamatory can be ignored, In the first article it is clearly alleged that Dr. Mata Prasad is incompetent and inefficient and having unworthy record is exercising pernicious influence on the education of youth and his continuance as Principal is a grave scandal. "It is libellous to impute to a man in any office any corrupt, dishonest, or fraudulent conduct, or any unfitness or want of ability to discharge his duties, and this is so whether the office be public or private, or whether it be one of profit, hohour, or trust." (See Gatley on Libel and Slander, P. 36). The imputation made against Dr. Mata Prasad about his unfitness, inefficiency and incompetency are injurious to his reputation and lower him in the estimation of the public. Consequently the article would be clearly libellous and actionable unless it is saved on the ground of fair comment or of justification.

> "The right of comment on a matter of public interest is not the peculiar privilege of the Press. A newspaper has the right, and no greater or higher right, to make comment upon a public officer or person occupying a public situation than an ordinary citizan would have. ... The defence of fair comment must be distinguished from that of justification. Under the latter the defendant must prove the truth of every defamatory fact alleged and every injurious imputation made, must prove that the Under the former the defendant facts on which the comment is founded are true and that the comment on these facts is 'fair'. In the case of justification the state of mind of the defendant at the time when he published the defamatory words is immaterial. Thus, the presence of actual malice is of fair comment the state of mind of the defendant at the time when he published the defamatory words is most material ... And proof of actual malice defeats the defence of fair comment ."
>
> (Ibid. pp. 368-69)

"To succeed in a defence of fair comment, the words

complained of must be shown to be :- 11
(i) Comment. (ii) Fair comment. (iii) Fair Comment on some matter of public interest. In order that an allegation Prima Facie defamatory may be defended as fair comment the allegation must be recognisable by the ordinary reasonable man as comment and not as a statement of fact. If the defendant alleges that a public man has been guilty of disgraceful conduct, or has been actuated by corrupt or dishonourable motives, and does not state what those disgraceful acts are, or assign any grounds from which such motives can reasonably be inferred, his allegations are allegations of fact, and not expressions of opinion, and he cannot rely on the defence of fair comment.

[See Davis Vs. Shepstone (1886) 11 A.C.,187; Myerson V Smiths Weekly Ltd. (1923.) 24 N.S.W.S.R. 20; Thompson vs. Truth, Ltd. (1934) N.S.W.S.R.21 (P.C.)]

In the present article no facts in support of the comments about the pernicious influence, incompetency and inefficiency have been alleged. It is stated in the article that the deplorable record and questionable methods of Dr. Mata Prasad in research were set forth before the public in uncompromising terms 'by your fearless Investigator'. What facts were revealed in that investigation have not been stated in this article. Unless those facts as disclosed in that investigation support these comments on Dr. Mata Prasad fair comment cannot be pleaded by the Editor and Publisher of 'Blitz'. Consequently, before any opinion can be expressed on this article, it would be necessary to know what was stated by the 'fearless Investigator' about the deplorable record and questionable methods in research of Dr. Mata Prasad.

In the second article the innuendo is obviously that Dr. Mata Prasad wilfully caused a leakage of the examination papers through his wife. The juxtaposition of the articles is significant, suggesting that they form part of the campaign to villify Dr. Mata Prasad, and to lower him in the public estimation. Unless the writer of this article and the printer and publisher thereof prove that Dr. Mata Prasad was mainly responsible for the leakage of the examination papers, I think, the article would be clearly defamatory of

)r. Mata Prasad and actionable.

Sd/- P.M.Lad
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o.c. Remembrancer of Legal Affairs.

J.R. to E. &. I.D. No. 9342 dated the 4th October 1948.

Mjr/17/5

4 C.

As servant, he is required to exercise care and dilligence with respect to his master's property enttusted to his care. In Abdulla Shariff vs. Mahomed Aba, 48 B.L.R. page 500, the facts were as follows:-

> "The defendant, a paid servant of the plaintiff, was sent to the Bank to pay in his master's money He returned saying that he had lost the money on the way and there was no proof that the money had been stolen from him. It was held that the defendant, not having taken due care and caution of his master's money was guilty of negligence and bound to repay it."

Applying the same principle, Mr. Mehta would be bound to repay the loss caused to Government, provided it could be proved that he did not take due care and caution of his ~~proved that he did not take due care and caution of his~~ master's money and was, therefore, guilty of negligence. Admittedly, Mr. Mehta was Assistant accountant and cashier in the office of the Assistant Director Civil Supplies on 10-12-1947 on which date the amount of Rs.4,720/- was found to be missing from the cash-box. On the previous day that amount was brought from the Bank for disbursement to various servants of Government. These facts will clearly prove that Mr. Mehta could ordinarily have been expected to take proper care and due caution of Government's money until it was properly disbursed. As a cashier he must be presumed to be sensible enough to understand the risks involved in failing to take proper care for the custody of the key of the cash-box. His behaviour would indicate that he was clearly guilty of gross negligence. In this connection his statement is as follows:-

> "At about 12-30 P.M. on that day (10-12-47) the cash-box in question was placed on my table and at about 1 p.m. I enquired of my assistant whether there were any moneys to be sent that day. Thus no payments were to be made and the key, therefore, naturally remained in the inner pocket of my coat. I had taken out my coat as usual and had hung it on the back of the chair. I was called four times that day for discussion by my superior officer necessitating thereby my enforced absence at my table. I continued to work till 2.45 P.M. when my assistant returned to his seat after lunch. I went out for launch at about 2.50 P.M. asking my assistant to keep a watch over the cash-box. I returned at about 3.45 P.M. I tried to take out the key of the box from my pocket and to my surprise neither that key nor the key of my safe deposit vault locker was there. I searched all my pockets, but in vain. I announced loudly that both the keys were missing from my pocket. My assistant and peon [illegible] to search the keys in the office

> Till then I had not the slightest suspicion that my keys were missing and that I was a victim of and huge fraud and foul play. Hearing this noise and bustle about the missing keys a peon of Mr. Shinde who was standing at the door of his room enquired as to what it was all about. I expalined to him about the two missing keys. He asked me to see the rack where something was lying at the bottom. I removed the rack and discovered the bundle of small notes with the iron clip properly placed near the wall by the side of my neighbour. This was the same bundle which I had put in the ~~cash box was then opened with the duplicate~~ cash box the previous day, I suspected a foul play and immediately reported the matter to the A.D.C.S. The cash-box was then opened with the duplicate key brought by him. It was then found that all the big notes of Rs.100/- and Rs. 10/- of the value of Rs. 4, 720/- were missing. The police were sent for and they statred investigation.

It is clear from this statement that Mr. Mehta did not realise his own responsibilities as ~~a~~ cashier and was so negligent as to keep the key of the confidential box in the inside pocket of his coat and went launch leaving his coat hanging on the back of his chair. No prudent man ~~and~~ much less a cashier could have failed to carry his coat with him when he knew that he was going out for a lunch and taken care to see that that key of the sash-box was in the safe custody. These facts clearly prove negligence on his part. It is true that Mr. Mehta was arrested by the Police, and was discharged for want of evidence. That was in connection with offence of theft or misappropriation of Government money. It is not on that ground now that Mr. Mehta is to be sued for reimbursement, but it is on the ground that he failed to take due care and caution of Government's money, as a result of which Government's money was lost. Consequently, it appears possible to successfully sue Mr. Mehta for repayment of the money lost on account of his negligence.

Sd/- P.M.Lad
17/12

o.c. Remembrancer of Legal Affairs.

U.R. to F.D., No. 12086 , dated the 20th December 1948

Mjr/18/5

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